

Conversely, respondent and its insurance carrier contend the preliminary hearing Order should be affirmed. First, respondent and its insurance carrier argue that claimant did not initially report that she had injured herself at work. Instead, on March 2, 2001, claimant nonchalantly mentioned that her knee was aching and failed to relate that symptom to her work. Second, they argue that claimant did not make any complaints to

her lead person while working her 12-hour shift the next evening. Third, they argue that Aaron Vincent, who worked in claimant's area on the date of the alleged accident, testified that claimant did not mention her alleged injuries to him on March 2, 2001, and that Mr. Vincent also contradicted claimant's testimony as claimant used an air lift to move the reels of wire. Therefore, respondent and its insurance carrier request the Board to affirm the preliminary hearing Order.

The only issue before the Board on this appeal is whether claimant sustained personal injury by accident arising out of and in the course of employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The preliminary hearing Order should be affirmed.

Claimant's testimony of reporting her alleged injuries to her lead person, Rhonda Treece, is contradicted by Ms. Treece, who has no apparent reason to falsify her testimony. Ms. Treece also contradicted claimant's testimony that she asked for light duty work on March 3, 2001. Likewise, the testimony of claimant's coworker, Aaron Vincent, contradicts claimant's testimony regarding the use of the air lift and establishes the fact that claimant did not complain to him of any symptoms the evening of the alleged accident.

Both the contradictory testimony and the medical records introduced at the preliminary hearing raise questions concerning the source of claimant's complaints. The Coffeyville Regional Medical Center, Inc., emergency room records dated March 7, 2001, indicate on that date claimant was complaining of low back pain, neck pain, bilateral hip pain, right shoulder pain, and bilateral leg pain, all of which allegedly started at work on March 1, 2001. But the emergency room records from August 20, 2000, indicate claimant at that time was also complaining of low back pain and bilateral leg pain from moving furniture. The records also indicate that claimant was in the emergency room on September 25, 2000, for back pain that started after lifting at work, which claimant testified occurred while she was working for a temporary employment agency. Unfortunately, the record does not contain an expert medical opinion that addresses the cause of claimant's present symptoms.

Claimant now asks the Board to believe that she injured her neck, back, hips, legs, and right shoulder on March 2, 2001, but was able to work her 12-hour shift on March 3, 2001, without complaining about her injuries or requesting authority to see a doctor. Judge Frobish was in the unique position to observe the witnesses testify at the preliminary hearing and assess their credibility. Based upon the various inconsistencies in the record, the Board affirms the Judge's finding that claimant, at this juncture of the proceeding, has failed to prove that she injured herself at work as alleged.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.¹

WHEREFORE, the Board affirms the June 11, 2001 preliminary hearing Order entered by Judge Frobish.

IT IS SO ORDERED.

Dated this ____ day of August 2001.

BOARD MEMBER

c: Kevin T. Stamper, Wichita, KS
Stephen J. Jones, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director

¹ K.S.A. 44-534a(a)(2).